Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-176

DANA CORPORATION AND THE ECHLIN MANUFACTURING CO.,
Appellants,
v.
STATE OF CALIFORNIA AND LEGISLATURE OF THE STATE OF CALIFORNIA, et al.,
Appellees.

No. 80-177

CONTIGNITRON COMPANY,
Appellant,
v.
STATE OF CALIFORNIA AND LEGISLATURE OF THE STATE OF CALIFORNIA,
Appellees.

APPEAL FROM JUDGMENT OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellees State of California, Legislature of the State of California and Edmund G. Brown Jr., as Governor of the State of California hereby move to dismiss the appeals filed in the above-titled cases, or to affirm the judgment of the Court of Appeal of the State of California.

This motion is filed pursuant to Rule 16 of the Supreme Court Rules and is taken on the grounds that:

1) The appeal is not within the jurisdiction of this Court because it was not taken in conformity to statute;

2) The federal question sought to be reviewed was not timely or properly raised;

3) The federal question sought to be reviewed was not expressly passed on;

4) The judgment rests on an adequate non-federal basis; and

5) The appeal does not present a substantial federal question.

This motion is based on the appendices filed by appellants in this matter and the brief in support of this motion filed herewith.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

I

THE APPEAL IS NOT WITHIN THE JURISDICTION OF THIS COURT

Appellants assert that this Court has jurisdiction by virtue of 28 U.S.C. § 1257(2). (Jurisdictional Statement

in No. 80-176, p. 1; *id.* in No. 80-177, p. 3.) That subsection provides for jurisdiction:

> "By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The appeal may not be taken under this section because (1) no statute's validity was drawn into question; and (2) no decision was made for or against the validity of any statute.

First, appellants seek compensation based upon the *repeal* of a statute which required the installation of pollution control devices on certain automobiles. They have simply not identified "a statute of any state" the validity of which they are challenging.

Even assuming the repeal of a statute is itself a "statute," appellants never questioned the *validity* of the repeal of the statute; indeed, they insisted upon it. No quarrel can be found in their pleadings or briefs to the state courts concerning the *validity* of the repeal. Appellants never argued that the repeal should be declared nugatory and installation of the devices pursuant to the repealed statute should be recommenced. All appellants sought was *compensation* pursuant to alleged contracts or quasi-contracts; the validity of a statute was never in issue. (See Appendix in No. 80-176, pp. 37, 56; *id.* in No. 80-177, p. 18.)

Likewise, the California Court of Appeal rendered no decision concerning the *validity* of the repeal. All the court held is that plaintiffs are not entitled to compensa-

tion on their various theories, including contract, quasi-contract and unjust enrichment. This is clearly outside the scope of any question concerning the validity of a statute and consequently outside the scope of this court's appellate jurisdiction.

II

THE ISSUE OF THE VALIDITY OF THE REPEAL OF THE STATUTE WAS NOT TIMELY OR PROPERLY RAISED IN THE STATE COURTS.

As was set forth above, appellants never contested in the state courts the validity of the repeal of any state statute; indeed, they expressly renounced any argument that the repeal should be declared invalid and the former statute restored.

While appellants did raise in the state courts, with one major exception,[1] the various questions set forth in their Jurisdictional Statement (No. 80-176, pp. i–ii; No. 80-177, p. 2) none of *those* questions go to the validity of the repeal of the statute, and hence cannot be the basis of

[1] Each appellant asks this Court to determine whether the California Tort Claims Act can immunize appellees from their claims. Appellants Dana and Echlin contend that such immunization runs afoul of the Supremacy Clause (No. 80-176, p. ii) while appellant Contignitron alleges that such immunity would violate the Contract Clause (No. 80-177, p. 2).

Before the state courts, appellants limited their arguments to the *inapplicability* of the California Tort Claims Act on the ground that it applies only to causes of action in tort, whereas they alleged contractual-type causes of action. They never raised the question of whether the Tort Claims Act, if applicable, is constitutional. Consequently, this question could not be heard on appeal in this court.

this appeal. The issue of the validity of a state statute or repeal thereof was never raised.

III

THE QUESTION OF THE VALIDITY OF A STATE STATUTE WAS NOT EXPRESSLY PASSED ON

Just as appellants did not raise any issue as to the validity of a state statute (*supra,* Argument II), so the California Court of Appeal did not rule on the validity of any state statute.

Rather the Court concluded that no cause of action had been stated for damages, and moreover that the complaint was, in reality, an action in tort of the sort barred by the California Tort Claims Act. (No. 80-176, Appendix, pp. 2–5; No. 80-177, pp. A-1–A-4.)

Moreover, the question noted above as to the constitutionality of the California Tort Claims Act, in light of the Supremacy Clause or the Contract Clause, was never addressed at all by the state court.

IV

THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS

As appellants note, the California Court of Appeal ruled that the alleged "contract" between the parties was void *ab initio.* The Court thus accepted appellees' position that the State of California is not empowered to enter contracts whereby it promises not to exercise its police power in the future.

There is no federal common law concerning what contracts state and local governmental agencies are empowered to enter into. Decisions of state courts in this regard are binding on the Supreme Court. *R.R. Comm'n* v. *Los Angeles R. Co.* (1929) 280 U.S. 145, 152; *see Southern Iowa Elec. Co.* v. *Chariton* (1920) 255 U.S. 539, 546.

If, under state law, appellees were without power to enter into the alleged "contract," consideration of the "federal questions" concerning the constitutionality of the asserted abrogation of such contracts is precluded by the existence of an adequate state ground for the state court's decision.

V

THE APPEAL FAILS TO PRESENT A SUBSTANTIAL FEDERAL QUESTION

In light of the obvious lack of appellate jurisdiction in this case, it would be pointless to recapitulate the extensive refutation of appellants' sundry arguments which were presented to the California courts. The central and pervasive deficiency in appellants' pleading, however, may be simply and concisely stated.

Appellants saw a lucrative opportunity when the California Legislature created a captive market for automobile retrofit devices. When accepting the artificial financial opportunity created by statute, appellants necessarily accepted the concomitant risk—that the captive market would demand its freedom and that elected representatives would, in fact, represent their constituents. Appellants, however, are seeking to have the courts rec-

ognize a phantasmal "vested right" in the former state of the law. They successively seek to clothe this "right" in the garb of "contract," and "quasi-contract," and "unjust enrichment," and "inverse condemnation," but none of the costumes remotely fit.

If appellants' view of the law, summarily rejected by the California courts, were to be accepted by this Court, appellants' new doctrine, while without ancestors, would spawn numerous progeny. As but one example, a citizen who arranged his financial affairs in reliance on the state of the tax laws could demand damages if those laws were changed.

In short, no discussion of learned authority is required to recognize appellants' arguments as frivolous, as the California courts have done, and to inexorably conclude that the appeal poses no substantial federal question.

Respectfully submitted,
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